

FAIRFAX COUNTY
STANDARD FORM AGREEMENT BETWEEN OWNER AND ARCHITECT

For providing the professional services described in this **Agreement #** _____ for
_____ **Project**
(the "Project").

THIS AGREEMENT, made and entered into this ____ day of _____, 2007 (Effective Date), between the Fairfax County Redevelopment and Housing Authority, a public body corporate and politic (the "Owner") and Grimm and Parker, Architects, a professional corporation (the "Architect"), recites and provides as follows.

WITNESSETH that, in consideration of the mutual stipulations, agreements and covenants contained herein, the parties hereto have agreed and hereby agree, for themselves, their successors and assigns, as follows:

1. The Architect shall provide professional architectural and construction administration services for the Project in accordance with the General Terms and Conditions of this Agreement.
2. The Owner shall compensate the Architect in accordance with the General Terms and Conditions of this Agreement.

**GENERAL TERMS AND CONDITIONS OF AGREEMENT
BETWEEN OWNER AND ARCHITECT**

A. Basic Services

The Architect shall provide the Owner with professional design services in all phases of the Project to which this Agreement applies. The services to be performed by the Architect hereunder are described in this Paragraph A (the "Work") and generally consist of Basic Services, Schematic Design, Design Development, Construction Documents, Bidding and Negotiating, Administration of the Construction Contract and Project Close Out, for the construction of the Lewinsville Expansion Project. The Work shall include serving as the Owner's design representative for the Project, providing such structural, mechanical and electrical engineering services and any other design services which are necessary in order to achieve the result intended by the Owner and which customarily are furnished in connection with projects similar in nature and scope to the Project. The Basic Services shall include the Owner's General Design Requirements (new building, rehabilitated building and site improvements), the receipt of which Architect hereby acknowledges

The Architect also shall be responsible for the coordination of all drawings and design documents relating to the Architect's design and used in connection with the Project, regardless of whether such drawings and documents are prepared or performed by the Architect, by the Architect's subcontractors or subconsultants, or by others. The Architect shall be responsible for coordination of all drawings and design documents relating to the Architect's design and used in connection with the Project, regardless of whether such drawings and documents are prepared or performed by the Architect, by the Architect's subcontractors or subconsultants, or by others. The Architect shall be responsible for coordination and internal checking of all drawings and for the accuracy of all

dimensional and layout information contained therein, as fully as if each drawing were prepared by the Architect. All Construction Documents including the Specifications shall be produced in electronic format (See Exhibit C). The Architect shall be responsible for the completeness and accuracy of all drawings and specifications submitted by or through the Architect and for their compliance with all applicable codes, ordinances, regulations, laws and statutes.

The Owner shall have the right to reject all or any portion of the Architect's Work on the Project, including, but not limited to, schematic phase, design development phase or construction phase work, and any other design work or documents, on any reasonable basis, including, but not limited to, aesthetics, or because in the Owner's opinion, the construction cost of such design is likely to render such work or the Project not practicable or feasible. In the event that all or any portion of the Architect's Work is rejected by the Owner, then the Architect shall proceed, when requested by the Owner, with revisions to the Work in order to satisfy the Owner's objections. Any such revisions will be made without adjustments to the compensation provided for hereunder. Should there be substantial revisions to the original program after the approval of the Schematic Drawings, which changes substantially increase the scope of design services to be furnished hereunder, the Architect shall so notify the Owner in writing (which notice shall contain an explanation of the circumstances and an estimate of the cost thereof) and receive approval from the Owner, before proceeding with revisions necessitated by such changes. No payment of any nature whatsoever will be made to the Architect for additional work or services without such prior written approval by the Owner.

The Owner shall at all times have reasonable access to files and personnel of the Architect relating to the Project in order to answer any questions the Owner may have relating to the Architect's performance on the Project.

1. Schematic Design.

- (a) Within no more than 30 days after the Owner's Notice to Proceed, the Architect shall provide the Owner with a progress schedule based on the Owner's overall project schedule.
- (b) The Architect shall devote reasonable time and effort to working with the Owner, the Project Team (PT) and the community to develop a program based on the general scope of work to be furnished by the Architect to the Owner. These efforts shall include the Architect's presentations to the PT, and to the community, as required by Owner.
- (c) Based on the program agreed upon, the Architect shall prepare Schematic Design Studies consisting of drawings and other documents illustrating the scale and relationship of Project components for approval by the Owner. These plans shall be presented to the PT and the community, as required, prior to proceeding with Design Development Drawings and shall be accompanied by a Cost Estimate based on current area, volume or other unit costs. The Cost Estimate and any adjustments thereto shall indicate, in a level of detail reasonably satisfactory to the Owner, the cost of each category of work involved in constructing the Project and shall include an estimate of the period of time required from the commencement to the completion of construction of the Project.
- (d) The Architect shall provide to the Owner four sets of the Schematic Design Studies for review and comment by the Owner.
- (e) The Architect shall advise the Owner of any need for, or advisability of, the Owner's securing any tests, analyses, studies, reports, or consultant's services in connection with the development of the design and Construction Documents for the Project.

2. Design Development. After approval of the Schematic Design Studies by the Owner, the Architect shall:
 - (a) Prepare, for approval by the Owner, the Design Development Documents consisting of drawings and other documents, outline specifications and written descriptions of other elements of the Project including, without limitation, architectural, structural, mechanical and electrical systems, materials and such other elements as may be appropriate.
 - (b) Make, together with his consultants, if any, such extensive building surveys as may be necessary to determine all conditions which will affect new work, including, but not limited to, areas above ceilings and electrical, mechanical and plumbing systems.
 - (c) Submit to the Owner a further Statement of Probable Construction Cost.
 - (d) Provide the Owner with four sets of the Design Development Documents for its review and comment.
3. Construction Documents.
 - (a) The Architect shall prepare from the approved Design Development Documents, for approval by the Owner, Drawings and Specifications setting forth in detail the requirements for the construction of the entire Project, including necessary bidding information, and shall assist in the preparation of bidding documents, the General Conditions of the Contract for Construction, the form of Agreement between the Owner and the Contractor and the other documents and instruments referred to herein and therein as the "Contract Documents." The Architect and his subcontractors and subconsultants shall use the Specifications and Approved Product List provided by the Owner, which Specifications and Approved Product List shall not be modified without the Owner's prior written approval.
 - (b) The Architect shall provide the Owner with four Construction Document review sets at both the 50% completion and 100% completion stages.
 - (c) The Architect shall advise the Owner of any adjustments to the latest Cost Estimate caused by changes in the general scope, extent or character or design requirements of the Project or by general market conditions and shall furnish to the Owner a revised Cost Estimate which includes all such adjustments.
 - (d) The Owner shall file the required documents for the General Building Permit. It shall be the sole responsibility of the Architect to expedite and secure all required approvals of Plans and Specifications including, but not limited to, the approvals of the Department of Public Works and Environmental Services, the Department of Health, the Department of Fire and Rescue. The Architect shall provide plan review status reports in writing to the Owner on a weekly basis. Architect shall coordinate permit procurement with Civil Engineer, contracted separately by Owner.
4. Bidding and Negotiating.

- (a) Following the Owner's approval of the Construction Documents and of the latest Cost Estimate, the Architect shall assist the Owner in advertising for, soliciting and obtaining bids or negotiating proposals and, where applicable, shall maintain a record of prospective bidders to whom Bidding Documents have been issued and shall attend pre-bid conferences.
- (b) Upon request by the Owner, the Architect shall prepare addenda, as necessary or appropriate, in order to interpret, clarify or otherwise explain the intent of the Bidding Documents.
- (c) Upon request by the Owner, the Architect shall consult with and assist the Owner in conducting any prequalification of prospective bidders for the Project.
- (d) The Architect shall consult with and advise the Owner as to the acceptability of subcontractors, suppliers and other persons and organizations proposed by the Contractor to perform portions of the Work.
- (e) The Architect shall consult with the Owner concerning, and determine the acceptability of, substitute materials and equipment proposed by the Contractor when substitution prior to the award of the contract is allowed by the Bidding Documents.
- (f) The Architect shall attend the bid opening, prepare bid tabulation sheets and assist the Owner in evaluating bids or proposals and in assembling and awarding the contract for construction.
- (g) In the event that the lowest bona fide proposal which is submitted by a responsible contractor satisfactory to the Owner for construction of the Project pursuant to the approved Drawings and Specifications exceeds the final cost estimate of Construction Cost by 5% or more, then the Architect shall, at its sole cost and expense, revise the Drawings and Specifications as may be required by the Owner in order to reduce or modify the scope of the Project so that the total Construction Cost of the Project will not exceed the fixed limit Construction Cost.

5. Administration of the Construction Contract.

- (a) The Architect shall serve as the Owner's representative (i) during construction, (ii) until final payment is due to the Contractor under the Construction Contract, and (iii) with the Owner's concurrence, from time to time, for a period of one year after the date of Substantial Completion of the Project.
- (b) The Architect shall consult with and advise the Owner and shall provide administration of the Construction Contract as set forth in the General Conditions of the Contract for Construction, together with, and as amended by, the Owner's supplementary general conditions and other documents included or incorporated into the Contract Documents.
- (c) The Architect, as the representative of the Owner during the Construction Phase, shall advise and consult with the Owner and shall have authority to act on behalf of the Owner to the extent provided in the General Conditions of the Contract for Construction, unless otherwise modified in writing.

- (d) The Architect shall have access to the Project at all times during construction and shall make periodic visits to the site of the Project in order to assess and evaluate the progress and quality of the Contractor's Work and to determine in general if the Contractor's Work is proceeding in accordance with the requirements of the Contract Documents. The Architect (and his subconsultants and subcontractors, as appropriate) shall carefully review the quality and quantity of the Contractor's Work at least on a weekly basis as part of the Architect's Basic Services and shall issue written reports of such reviews. The Architect may be required to meet at the site of the Project in emergency situations. On the basis of his on-site observations as an architect, the Architect shall endeavor to guard the Owner against defects and deficiencies in the Work of the Contractor. Notwithstanding the foregoing, the Architect shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Contractor's Work.
- (e) The Architect (including the individual architect who shall have designed the Project) and his appropriate consultants will attend construction progress meetings every two weeks (or more often, if deemed necessary by the Owner), prepare minutes of the meetings, and provide written Project status reports to the Owner.
- (f) Based on his observations at the site of the Project and his review of the documentation in support of the Contractor's Applications for Payment, the Architect shall determine the amount owing the Contractor and shall approve, reject or revise such Applications for Payment. The Architect's issuance of a Certificate for Payment shall constitute a representation by the Architect to the Owner, based on his on-site observations and his review of the Applications for Payment, that the Contractor's Work has progressed to the point indicated; that to the best of the Architect's knowledge and belief the quality of the Contractor's Work conforms to the requirements of the Contract Documents; and that the Contractor is entitled to payment from the Owner in the amount certified.
- (g) The Architect shall be the interpreter of the requirements of the Contract Documents and the impartial judge of the performance thereunder by both the Owner and the Contractor. The Architect shall assist the Owner in making decisions on all claims of the Owner or Contractor relating to the execution and progress of the Contractor's Work and on all other matters or questions related thereto.
- (h) The Architect shall have the authority and responsibility to reject all or any portion of the Contractor's Work that does not conform to the strict requirements of the Contract Documents. Whenever, in his reasonable opinion, he considers it necessary or advisable to ensure the proper implementation of the intent of the Contract Documents, the Architect, after consulting with the Owner, shall have the authority to require special inspection or testing of any of the Contractor's Work in accordance with the provisions of the Contract Documents, whether or not such Work has been fabricated, installed or completed.
- (i) The Architect shall expeditiously review and approve shop drawings, samples and other submissions of the Contractor for conformance with the design concept of the Project and for compliance with information given in the Contract

Documents. The Architect shall obtain the approval of the Owner prior to approving any items that do not conform to the strict requirements of the approved Contract Documents. The Architect shall make available to the Contractor at no additional charge a computer disk containing the Drawings and Specifications for the entire Project in vector format for use in producing shop drawings.

- (j) The Architect shall prepare Proposed Modifications, Work Orders and Change Orders, as appropriate. The Construction Documents shall be updated electronically on a continuing basis.

6. Project Close Out.

- (a) The Architect shall conduct inspections to determine the dates of Substantial Completion and Final Completion, shall prepare the punch list, shall receive and review written guarantees and related documents assembled by the Contractor, and shall issue a Certificate for Final Payment in accordance with the General Conditions.
- (b) The Architect shall, without additional cost to the Owner, prepare a set of As-Built drawings. The as-built drawings shall be submitted on CD in both vector and raster format (See Exhibit C). The project documents shall consist of the following:

- Construction Drawings
- All Addenda
- All executed change orders
- Contractor and Owner inspector as-built mark-ups

In addition, a separate file shall be submitted in vector format consisting of single sheet drawings for site, architectural, mechanical, plumbing, electrical and electronic systems (See Exhibit C).

- (c) From the As-Built drawings, the Architect shall furnish the Owner with two sets of 35mm aperture cards; the cost of the aperture cards shall be reimbursable to the Architect in accordance with Section E, below.
- (d) The Architect shall provide extensive assistance in connection with the utilization of any equipment or system installed in connection with the Project, including, without limitation, initial start-up and testing, adjusting and balancing, review and approval of operation and maintenance manuals, training personnel for operation and maintenance, and consultation during operation.

B. Additional Services

Any Additional Services which may be required will be negotiated by the Owner and the Architect. No additional fees will be paid to the Architect or his subcontractors or subconsultants for work using contingency allowance funds contained in the Construction Contract. No architectural services made necessary, in whole or in part, by any fault or omission of the Architect (or any subcontractor or subconsultant of the Architect) to perform his duties, responsibilities or obligations under this Agreement shall be compensated as Additional Services under this Agreement.

C. Owner's Responsibilities

1. The Director of the Design, Development, Construction Division of the Fairfax County Department of Housing and Community Development (or his designee) shall be the Owner's representative and shall have authority to transmit instructions, receive information, and interpret and define the Owner's policies and decisions with respect to the Architect's performance of the Work. The Owner shall examine documents submitted by the Architect and shall render decisions pertinent thereto promptly in order to avoid unreasonable delay in the progress of the Architect's services.

2. The Owner shall provide the general scope of work, construction and any tenant specifications, and any lists of approved products and materials in order to assist the Architect in developing a complete program for the Project.

3. The Owner shall make available to the Architect, to the extent it is in the possession of the Owner, information pertinent to the Project, including previous reports and any other data relative to design or construction of the Project, including without limitation the following:

- (a) data prepared by or services of others, including without limitation, borings, probings and subsurface explorations, hydrographic surveys, laboratory tests and inspections of samples, materials and equipment;
- (b) environmental assessment and impact statements;
- (c) property, boundary, easement, right of way, topographic and utility surveys;
- (d) property descriptions; and
- (e) zoning, deed and other land use restrictions.

4. The Owner shall give notice to the Architect if the Owner observes or otherwise becomes aware of any fault or defect in the Project or non-conformance with the Contract Documents.

D. Construction Cost

1. The Construction Cost of the entire Project (herein referred to as the "Construction Cost") means the total cost to the Owner of those portions of the entire Project designed and specified by the Architect. The Construction Cost shall be determined as follows, with precedence in the order listed:

- (a) For completed construction, the cost of all portions of the Project designed and specified by the Architect;
- (b) For work not constructed, the lowest bona fide and responsive bid received from a responsible bidder for any or all of such work;
- (c) For work for which no such bid is received, the latest Detailed Estimate of Construction Cost approved by the Owner (and within the approved construction budget).

2. Construction Cost does not include the compensation of the Architect or his subcontractors or subconsultants, if any, the cost of land, rights-of-way, or any other costs which are the responsibility of the Owner as provided in Paragraph C.

3. Since neither the Architect nor the Owner has control over the cost of labor, materials, equipment or services furnished by others, or over the Contractor's methods of determining prices, or over

competitive bidding or market conditions, the Architect's Detailed Cost Estimates are made on the basis of the Architect's experience and qualifications and represent the Architect's best judgment as an experienced and qualified design professional familiar with the construction industry; but the Architect cannot and does not guarantee that bids will not vary from any Statement of Probable Construction Cost or other cost estimates prepared by him.

4. The Owner and Architect shall determine what materials, equipment, component systems, and types of construction are to be included in the Contract Documents and shall make reasonable adjustments in the scope of the Project in order to establish the Construction Cost at a reasonable cost.

In the event that the lowest bona fide bid exceeds the Construction Cost estimate by 5% or more, then the Owner, in its sole and absolute discretion, shall elect any one or more of the following: (a) the Owner shall give approval for an increase in such cost; (b) the Owner shall authorize the rebidding of the Project within a reasonable time; (c) the Owner shall cooperate in revising the Project's scope and/or quality as required to reduce the Probable Construction Cost; (d) the Owner shall elect not to proceed with the Project; or (e) the Owner shall take such other reasonable actions as it shall deem to be in its best interests under the circumstances. The Architect, without additional charge, shall modify the Drawings and Specifications as necessary to bring the Construction Cost within the estimate in accordance with the provisions of Paragraph A.4.[g].

E. Reimbursable Expenses

The Architect shall be reimbursed by the Owner for the bid set Construction Documents (excluding addenda); and the 35mm aperture cards and computer disk. The Architect shall use only printing companies approved by the Owner.

F. Payments to the Architect

1. Payments for Basic Services shall be made periodically upon approved invoices submitted no more frequently than once per month, in proportion to services performed so that the compensation at the completion of each Phase shall approximately equal the following percentages of the total Basic Compensation:

Schematic Design	15%
Design Development.....	35%
Construction Documents.....	70%
Bidding or Negotiation.....	72%
Construction and Project	
Close Out	100

Cost for these Basic Services are indicated on Exhibit A attached to this Agreement.

2. Payments for Additional Services, as defined in Paragraph B, and Reimbursable Expenses, as defined in Paragraph E, shall be made as provided herein. The Architect shall prepare and submit to the Owner each month an invoice in a form acceptable to the Owner describing any Additional Services performed or any Reimbursable Expenses incurred during the immediately preceding month, in accordance with the hourly rates for services set forth on Exhibit A attached to this Agreement.

3. The Owner will make reasonable efforts to pay each approved invoice, whether for Basic Services or Additional Services, within 45 days after its receipt.

4. The Owner may withhold such amounts otherwise due the Architect as may be necessary in the opinion of the Director of the Design, Development and Construction Division (or his designee) to protect the Owner against loss or damage due to:

- (a) defective Work not remedied,

- (b) third party claims filed or reasonable evidence indicating probable filing of such claims as a result, in whole or in part, of the Work,
- (c) failure of the Architect to make payments properly to its subcontractors or subconsultants,
- (d) persistent failure of the Architect to perform the Work in accordance with, or to observe the requirements of, this Agreement,
- (e) liability, damage, loss or injury to persons caused by the act or neglect of the Architect or any of its subcontractors or subconsultants in connection with the Work, or
- (f) damage to the Owner or to another as a result, in whole or in part, of the Work.

In the event that amounts are withheld hereunder, the Owner shall provide the Architect with written notice setting forth the amount and basis for the withholding. The Architect may contest such withholding by notifying the Director of the Design, Development and Construction Division in writing within 10 days after the date of notice to the Architect of the withholding. The Architect shall provide the Director of the Design, Development and Construction Division with all information which supports his claim of entitlement to full payment hereunder. The Director of the Design Development and Construction Division (or his designee) shall render a decision regarding the withholding of amounts pursuant to any one or more of the items identified in (a) through (f) above within 30 days after his receipt of the notice from the Architect. If the Architect chooses to dispute the decision which has been rendered, the Architect agrees to file suit within no more than thirty (30) days of the date upon which the decision was rendered or the claim is waived.

In the event that amounts have been withheld pursuant to subparagraph (c) above, the Owner may in its discretion pay such amount by two-party check to the Architect and its subcontractors or subconsultant(s); in which event the amount so paid shall be credited in full against the Owner's obligations to make payment to the Architect under this Agreement.

5. Plan deposits not refunded shall be forwarded to the Owner.

6. Records of the Architect's Reimbursable Expenses and expenses pertaining to Additional Services on the Project shall be kept in accordance with generally accepted accounting principles. Copies will be delivered to the Owner promptly upon request and prior to any payment therefor.

7. The Architect hereby covenants and agrees that, in the event that the Architect receives additional compensation from the Owner which is attributable to an increase in the Construction Cost (whether for Basic Services or for Additional Services) on account of a change in the Project design which was performed, in whole or in part, by one or more of the Architect's subcontractors or subconsultants, then the Architect shall pay to each such subconsultant the *pro rata*, or otherwise fair and reasonable, portion of such additional compensation which is attributable to the services performed by the subconsultant in connection with such change. The Architect further covenants and agrees to include in each subcontractor or subconsulting agreement entered into in connection with the Project a provision entitling the subcontractor and subconsultant to receive compensation in accordance with the foregoing sentence. Upon request by the Owner, the Architect promptly shall provide to the Owner the following: (a) copies of any subcontractor and subconsulting agreements entered into in connection with the Project; and/or (b) evidence that the Architect has complied with the first sentence of this paragraph.

8. Within seven days after receipt of each payment from the Owner, the Architect shall:

- (a) pay each subcontractor and subconsultant an amount equal to the percentage of the Work attributable to such subcontractor or subconsultant, or

- (b) notify the Owner, and the subcontractor or subconsultant in writing of the intention to withhold all or part of the amounts due the subcontractor or subconsultant, and state the reason for such withholding.

In the event the Architect fails to submit a timely invoice, and that failure is due exclusively to the actions of the Architect, each subcontractor and subconsultant shall have the right to be paid by the Architect upon demand, the amounts due.

The Architect shall pay interest on amounts owed to any subcontractor or subconsultant which remain unpaid seven days after the Architect's receipt of payment from the Owner, provided, however, that amounts owed any subcontractor or subconsultant which have been withheld properly, pursuant to this section, shall not accrue interest. Interest on amounts due any subcontractor or subconsultant and unpaid shall accrue at the rate of .5% per month; provided, however that the Architect's obligation to pay interest hereunder shall in no event be construed to be an obligation of the Owner.

G. Certain Representations and Warranties of the Architect

The Architect represents that it is a duly organized and licensed entity which employs qualified and experienced personnel who specialize in performing the type of architectural services required hereunder. The Architect agrees to provide a sufficient number of personnel (hereinafter referred to as the "Project Team") who are suitably qualified, licensed, and experienced and who are in all respects acceptable to the Owner to perform the Work in an efficient and timely manner. Individual members of the Project Team are identified on Exhibit B to this Agreement and may not be replaced or substituted, for so long as they remain in the employ of the Architect, without the prior written consent of the Owner. The Project will, as among others, be the first priority of the Project Team, receiving its full time, attention and efforts to the extent the services of the Architect are required. The Architect recognizes that the individual architect who designs the Project shall also be substantially and actively involved in the day-to-day administration of the construction contract (including, without limitation, visiting the site to observe construction and to attend progress and other meetings). The Architect represents that it is capable in all respects (including the possession of sufficient financial resources to provide fully for the payment of employees) of performing the requirements of this Agreement and agrees to provide architectural services in accordance with generally accepted and currently recognized architectural practices, procedures and principles prevailing in the area of the Project. The Architect agrees to diligently and conscientiously devote its resources to the performance of the Work during the term of this Agreement. The representations and warranties of the Architect which are set forth in this Agreement shall survive the execution of this Agreement.

H. Termination of Agreement

1. This Agreement may be terminated by the Owner, with or without cause, at any time upon seven days' written notice to the Architect. In the event of termination, the Architect shall receive compensation for all Work satisfactorily completed, and all Reimbursable Expenses incurred, through the date of such termination; provided, however, that upon receipt of a notice of termination, the Architect shall, as soon as practicable, suspend all Work within his control (including services provided by subcontractors or subconsultants, if any) and shall not incur any additional expense for which he seeks or intends to seek compensation. Furthermore, daily compensation for services provided during the period between the date of the notice of termination and the date of termination shall in no event exceed the average daily compensation paid to the Architect for services provided during the calendar month immediately preceding notice of termination.

2. In the event of any termination under this Paragraph H, the Architect consents to the Owner's selection of another architect or engineer of the Owner's choice to assist the Owner in any way in completing the Project. The Architect further agrees to cooperate and provide any information reasonably requested by the Owner in connection with the completion of the Project and consents to and authorizes the making of any reasonable changes to the design of the Project by the Owner and such other architect or engineer as the Owner may select.

I. Ownership of Documents

The original drawings and specifications which are produced hereunder (the "Instruments of Service") are the property of the Architect; provided, however, the Project is the property of the Owner, and the Architect may not use the Instruments of Service for any purpose not relating to the Project without the Owner's consent. The Owner shall be furnished with such reproductions of the Instruments of Service as the Owner may require. Upon completion of the Work or any earlier termination of the Agreement pursuant to Paragraph H, the Architect will revise drawings to reflect changes made during construction and the Architect will promptly furnish the Owner with one complete set of as-builts in electronic format. The Architect hereby acknowledges and agrees that all such reproductions of Instruments of Service shall be the property of the Owner, who shall have full right, power and authority to use them without the Architect's permission and without further payment to the Architect for any purpose, including, but not limited to, other projects, for additions to this Project, and/or for completion of this Project by others.

In recognition that the Contract Documents are being prepared with respect to the Project described herein, the FCRHA agrees that, to the extent FCRHA may actually use the Contract Documents on developments other than the Project, or in any other manner inconsistent with the use intended hereunder, the FCRHA agrees to waive any claim against the Architect with respect thereto.

J. Insurance

The Architect shall secure and maintain throughout the duration of this Agreement and for a period of three years after the first to occur of (a) termination of this Agreement or (b) the completion of the Work, insurance coverages of the types and amounts hereinafter specified. Such insurance shall be maintained with solvent and responsible insurance companies who are authorized to do business in the Commonwealth of Virginia with a Best's Key Rating of at least A:VI and who are otherwise acceptable to the Owner. Each insurance policy shall contain a provision requiring that not less than 45 days written notice will be given to the Owner before the cancellation, non-renewal or material modification of such policy or coverage. Without limiting the foregoing requirements, the insurance coverages required hereby shall include a minimum of:

1. Workers' Compensation and employers' liability insurance as required by law in the Commonwealth of Virginia in limits of not less than \$100,000 to protect the Architect from liability or damages for any injuries, including death and disability, to any and all of its employees, including any and all liability or damage which may arise by virtue of any statute or law in force within the Commonwealth of Virginia..
2. Comprehensive automobile and vehicle liability insurance. This insurance shall be written in comprehensive form and shall protect the Architect and the Owner against claims for injuries to members of the public and/or damages to property of others arising from the Architect's use of motor vehicles or any other equipment and shall cover operation with respect to onsite and offsite operations under this Agreement, and such insurance coverage shall extend to any motor vehicles or other equipment irrespective of whether the same is owned, non-owned or hired. The limit of liability shall not be less than a \$500,000 combined single limit.
3. Commercial general liability insurance. This insurance shall be written in comprehensive form including the Broad Form Property Damage endorsement in addition to coverages for explosion, collapse, and underground hazards and shall protect the Architect and the Owner against claims arising from injuries to members of the public or damage to the property of others arising out of any negligent act or omission to act of the Architect or of any of its agents, employees, subcontractors or subconsultants. The limit of liability shall not be less than a \$1,000,000 combined single limit.
4. Professional liability insurance. Unless specifically agreed upon by the Architect and the Owner in writing, the Architect shall furnish professional liability insurance coverage in

an amount not less than \$1,000,000 unless otherwise agreed by Owner and subcontractors and subconsultants shall provide limits commensurate with the responsibilities associated with their portions of the Work.

5. The insurance coverages specified above shall constitute minimum requirements and the Owner (including its members, officers and employees) shall be included as additional insureds under the insurance policies referenced in Sections J(2), J(3) and J(4).
6. The Architect shall furnish Owner with certificates of insurance evidencing the coverages specified in this Agreement within 10 days after the date of execution of this Agreement. The Architect shall also maintain all insurance certificates of its consultants and subconsultants. Upon request by Owner, the Architect shall promptly provide the Owner with copies of the policies of insurance evidencing the coverages required hereunder.
7. The Owner may require such information from the Architect as it deems necessary in order to assess the Architect's financial ability to pay any applicable deductibles under the insurance policies identified above and the Architect hereby covenants and agrees to provide the Owner with all such information within seven days following receipt of a request therefor.
8. The maintenance in full force and effect of all insurance coverages required hereunder shall be a condition precedent to the Architect's exercise or enforcement of any of its rights under this Agreement.
9. Nothing contained herein shall be deemed to operate as a waiver of the Owner's sovereign immunity under the law.

K. Indemnity by Architect

The Architect shall indemnify and hold harmless the Owner and the County of Fairfax, Virginia (and members, officers, volunteers employees and authorized representatives of the Owner and the County of Fairfax, Virginia) from and against any claim, loss, damage, cost (including costs of investigation, all expenses of litigation including attorneys' fees and expenses and also the value of legal services if provided by the Fairfax County Attorney's Office, and the costs of appeals), expense or liability arising from or in connection with the negligent or wrongful act, error, or omission of the Architect, its agents, subcontractors, subconsultants, employees or other authorized representatives in connection with the performance of the Work or the breach of any representation, warranty, covenant or agreement of the Architect set forth herein.

L. Contractual Claims

If the Architect is of the opinion that any Work required, necessitated, or ordered by the Owner, or any action required or ordered by the Owner to be taken or not taken violates the terms and provisions of this Agreement, he shall proceed with the Work without delay and shall, within five days after commencing such Work or action, notify the Owner, in writing, of his claim with respect thereto and request a final determination thereof. In order to invoke the procedures of this section, the Architect's request must (i) refer specifically to this section by number; (ii) in the case of the Owner, be hand-delivered to the office of the Director of the Design, Development and Construction Division; and (iii) contain a full explanation of the basis of the Architect's position and the rationale for its request. The Owner shall issue a written determination with regard to any such claim on or before the date that is 10 business days after the date of its receipt of the Architect's written request; provided, however, that in the event that the Owner determines, based upon the size or complexity of the claim at issue, that additional time is required for the issuance of a response, the Owner shall issue written notice of such finding to the Architect within 10 business days following the date of its receipt of the Architect's written request and shall issue a written determination with regard to such claim on or before the date that is 30 days after the date of the Owner's receipt of the Architect's written request or the Architect's submission of all supplemental information where such has been

requested by the Owner. The Architect's failure to submit promptly any supplemental information requested by the Owner shall result in the waiver of the claim. In order to reserve his right to claim compensation for such Work, or damages resulting from such compliance, the Architect shall, within five days after receiving notice of the Owner's determination and direction, notify the Owner, in writing, that the Work is being performed or that the determination and direction is being complied with under protest. Failure of the Architect to so notify the Owner as provided herein shall constitute a waiver and release of the Architect's right to claim compensation for any Work performed under protest or damages resulting from such compliance.

M. Nondiscrimination and Drug Free Workplace

1. During the performance of this Agreement, the Architect will not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin, except where religion, sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the Architect. The Architect agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

2. The Architect, in all solicitations or advertisements for employees placed by or on behalf of the Architect, will state that such Architect is an equal opportunity employer.

3. Notices, advertisements, and solicitations placed in accordance with federal laws, rules, or regulations shall be deemed sufficient for the purpose of meeting the requirements of this section.

4. The Architect will include the provisions of the foregoing paragraphs 1, 2, and 3 in every subcontract, subconsulting agreement and purchase order over \$10,000, in order that the provisions above will be binding upon each subcontractor, subconsultant and vendor.

5. During the performance of this Agreement, the Architect agrees to (i) provide a drug-free workplace for the Architect's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Architect's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Architect that the Architect maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor. For purposes hereof, a "drug-free workplace" shall mean the site for the performance of the work contemplated by the Contract Documents.

N. Successors and Assigns

1. This Agreement shall not be assigned, sublet or transferred, in whole or in part, by operation of law or otherwise, by either of the parties hereto except with the prior written consent of the other. Unless specifically stated to the contrary in any written consent to an assignment, no assignment shall operate to release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this Paragraph shall prevent the Architect from employing (in accordance with the terms of this Agreement) such independent consultants and subcontractors as the Architect may deem appropriate to assist in the performance of his responsibilities hereunder.

2. Subject to the provisions of Paragraph N.1, this Agreement shall be binding upon and inure to the benefit of each of the parties hereto, and their respective successors and assigns.

O. Court of Jurisdiction; Waiver of Jury Trial

Any disputes hereunder between the Owner and the Architect which are not resolved by agreement shall be resolved by a court of competent jurisdiction in the Commonwealth of Virginia. The Owner and the Architect hereby waive any right they may have to a trial by jury in connection with any such dispute.

P. Governing Law

This Contract shall be (i) governed by and construed in accordance with the laws of the Commonwealth of Virginia, without reference to conflict of laws principles, and (ii) deemed to include all provisions of law required to be set forth herein, including the statement that the Owner does not discriminate against faith-based organizations.

Q. Counterparts

This Agreement may be executed in one or more counterparts, and each counterpart shall be deemed to be an original.

R. Gender or Plural

Whenever this Agreement so admits or requires, all references to one number shall be deemed to extend to and include the other number, whether singular or plural, and the use of any gender shall be applicable to all genders.

S. Project Audits

The Architect shall maintain adequate financial records pertaining to the Project in such a manner that they may be audited at any time during the term of this Agreement and until the expiration of three years after the date of final payment hereunder. A simple ledger sheet showing disbursement by line item is preferred. Within ten days after the date of the Owner's written notice, the Architect shall provide access to the following documents during this audit: All paid vouchers including those for out-of-pocket expenses, and other reimbursements supported by invoices, including Architect's copies of periodic estimates for partial payment; Ledgers; Canceled Checks; Deposit Slips; Bank Statements; Journals, if any, Copies of all contracts and copies of any contract amendments/change orders; Insurance documents; Payrolls; and Time sheets.

T. Access to Documents

In addition to its right to audit described above, the Owner and its authorized representatives shall have access to all Project Documents in the possession, custody, control or ownership of the Architect. The Project Documents shall be all documents and records in whatever form relating to the Project which are in the possession, custody or control of the Architect; provided, however, that the term "Project Documents" shall in no event be construed to include documents, records or other materials protected by the attorney-client privilege. The Architect hereby covenants and agrees that, at any time during the term of this Agreement and until the expiration of three years after the date of final payment hereunder, within 10 days after the Architect receives written notice from the Owner, it shall (i) make the Project Documents available for inspection and copying by the Owner and its authorized representatives at a reasonable cost payable by the Owner and during the Architect's regular business hours; and (ii) deliver to the Owner an index of all documents and materials which the Architect claims are protected by the attorney-client privilege, stating for each such documents the addressee(s), the author(s) any other recipients, the date, length (if applicable), the type of document or material, and a description of the subject matter sufficient to assess the applicability of the claim of privilege without revealing information itself privileged. Any failure on the part of the Architect to comply with the provisions of this Article shall constitute a breach of this Agreement and, regardless of whether such failure occurs during the term of this Agreement, or within the three year period commencing on the date of final payment hereunder, shall constitute sufficient grounds for debarment of the Architect. The Architect hereby agrees that it shall pay and be responsible for all costs and expenses (including court costs and attorney's fees) incurred by the Owner in enforcing this provision.

This provision is not intended to and shall not be construed to confer upon any person or entity that is not a party of this Agreement any right of access to the Project Documents under statute or otherwise.

U. Entire Agreement

This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior or contemporaneous negotiations, representations, understandings, or agreements, either written or oral, between the Owner and the Architect with respect to the subject matter hereof.

V. Conflict

In the event of a conflict between this Agreement and any other document setting forth the duties, responsibilities and obligations of the Architect, the terms of this Agreement shall govern.

W. Notices

All communications, notices and disclosures required or permitted by this Agreement shall be in writing and shall be deemed to have been given at the earlier of the date when actually delivered to the person indicated below or when sent by nationally recognized overnight carrier or certified or registered mail, postage prepaid, return receipt requested and addressed as follows, unless and until either party notifies the other in accordance with this Section of a change of address:

If to the Architect:

If to the Owner: Fairfax County Redevelopment and Housing Authority
3700 Pender Drive
Fairfax, Virginia 22030
Attn: Assistant Secretary, Paula C .Sampson

With a copy to: Fairfax County Attorney's Office
12000 Government Center Parkway
Suite 549
Fairfax, Virginia 22035

X. Subcontractor Services

In the event that services of subconsultants or subcontractors are required for portions of the Work, the Architect will be responsible for contracting for these services. In such event, the Architect shall so notify the Owner in writing and identify each such special consultant or subcontractor that may be required. The Owner, in its sole and absolute discretion, shall have the right to determine whether special consultants or subcontractors are to be used. The Owner reserves the right to reject any special consultants or subcontractors proposed by the Architect. Unless otherwise agreed upon by the Owner, the Architect shall obtain at least three proposals and furnish these proposals, with the Architect's recommendation, to the Owner for its approval prior to engaging any subcontractor.

Y. Prohibition Against Contingent Fees

The Architect warrants that he has not employed any company or person other than a bona fide employee working for the Architect to solicit or secure this Agreement and that he has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for the Architect any favor, commission, percentage, gift, or any other compensation contingent upon or resulting from the award or making of this or any other agreement. In the event of a breach of this provision, the Owner shall have the right to terminate this or any other agreement with the Architect without liability, and, in its discretion, to deduct from

amounts due under this Agreement, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration, as well as the cost of such recovery including, without limitation, reasonable attorney's fees.

Z. Time For Completion

The Work included in this Agreement shall be completed according to the following schedule:

Notice to Proceed-	(negotiated date)
Completion -	(negotiated date)

Neither the Owner nor the Architect shall be liable for any fault or delay caused by any acts of God, war, strikes, walkouts, fires or natural calamities.

AA. No Third Party Beneficiaries

No third party is entitled to rely on any of the representations, warranties and agreements of the Owner and the Architect contained in this Agreement. The Owner and the Architect assume no liability to any third party because of any reliance on the representations, warranties and agreements of the Owner and the Architect contained in this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first above written.

OWNER:

FAIRFAX COUNTY REDEVELOPMENT AND
HOUSING AUTHORITY

(SEAL)

ARCHITECT:

Principal

Corporate Secretary

(SEAL)

EXHIBIT A
RATES FOR ADDITIONAL SERVICES AND COST BREAKDOWN

Additional services shall be compensated at the following rates:

- (1) Principal Architect \$-----/hr
 Associate/Program Manager \$-----/hr
 Project Architect \$-----/hr
 Architect Designer \$-----/hr
 CAD Operator \$-----/hr
 Administrator \$-----/hr

- (2) All other employees at a multiple of [----] times their actual salaries.

- (3) Services of professional consultants at a multiple of [-----] times the amount billed to the Architect.

Cost Breakdown

Work Item	Cost
1. Other preliminary work	Under Separate Contract
2. Schematic Design	\$ _____.00
3. Design Development	\$ _____.00
4. Value Engineering	\$ _____.00
5. Construction Documents	\$ _____.00
6. Bidding and Negotiation	\$ _____.00
7. Construction Administration	\$ _____.00
8. <u>Project Close Out</u>	<u>\$ _____.00</u>
Total Cost: \$ _____.00	

Reimbursable Expenses provided under this Contract include \$ ____ for printing.
 See attached Fee Schedule, Exhibit D.

EXHIBIT B
PROJECT TEAM MEMBERS

Architect:

Civil:

Structural Engineer:

MPE Engineer:

Cost Consulting:

Critical Structures Testing:

EXHIBIT C

DRAWING FORMAT SPECIFICATIONS

The following documents shall be submitted on CD and shall include:

1. Project specifications in MSWord.
2. A complete set of as-built drawings in AutoCAD 2000. Submit a list of standards layers.
3. A complete set of as-built drawings submitted as dwf. files.

The following shall be submitted in AutoCAD 2000 and formatted to plot on a single sheet:

- A complete site plan. A list of layer names shall be issued.
- A complete overall floor plan of all floor levels that shall include: room names and square footages as attributes. Layers labeled as walls, columns, doors, stairs, windows, room name, title, and symbol shall be included.
- A complete mechanical system plan. A list of layers to be included shall be issued.
- A complete plumbing system plan. A list of layers to be included shall be issued.
- A complete power system plan. A list of layers to be included shall be issued.
- A complete sound system plan. A list of layers to be included shall be issued.
- A complete security system plan. A list of layers to be included shall be issued.
- A complete fire alarm system plan. A list of layers to be included shall be issued.
- A complete CATV plan. A list of layers to be included shall be issued.
- A complete networking system plan. A list of layers to be included shall be issued.
- A complete roofing plan. A list of layers to be included shall be issued.
- A complete sprinkler plan. A list of layers to be included shall be issued.